

PAYMENT AND COMPLETION GUARANTY

THIS PAYMENT AND COMPLETION GUARANTY ("Guaranty") is made as of _____, 200_, by _____, a California nonprofit public benefit corporation ("Guarantor"), in favor of California Housing Finance Agency ("Agency").

RECITALS

- A. Pursuant to the terms of a construction and term loan agreement between [borrower], a California limited partnership ("Borrower"), and Agency of even date herewith ("Loan Agreement"), Agency has agreed to loan to Borrower the principal sum of _____ no/100 Dollars (\$_____) ("Loan") for the purposes specified in the Loan Agreement, which purposes include the construction of certain improvements ("Improvements") described in plans and specifications required by the Loan Agreement ("Plans and Specifications") upon real property described in the Loan Agreement ("Property").
- B. The Loan Agreement provides that the Loan shall be evidenced by a promissory note ("Note") executed by Borrower payable to the order of Agency in the principal amount of the Loan and shall be secured by a deed of trust on the Property ("Deed of Trust") and by other security instruments, if any, specified in the Loan Agreement. The term "Loan Documents" for purposes hereof shall mean the Loan Agreement, the Deed of Trust, the Note and those other documents described in the Loan Agreement as Loan Documents.

THEREFORE, to induce Agency to enter into the Loan Agreement and to make the Loan, and in consideration thereof, Guarantors unconditionally guarantee and agree as follows:

1. **Guaranty.** Guarantor hereby guarantees the performance by Borrower of all the terms and provisions of the Loan Agreement pertaining to Borrower's obligations with respect to the construction of the Improvements. Without limiting the generality of the foregoing, Guarantor guarantees that: (a) construction of the Improvements shall commence and be completed within the time limits set forth in the Loan Agreement; (b) the Improvements shall be constructed and completed in accordance with the Plans and Specifications and the other provisions of the Loan Documents, without substantial deviation therefrom unless approved by Agency in writing; (c) the Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Improvements shall be paid when due.

In addition, Guarantor hereby guarantees and promises to pay to Lender or order, on demand, in lawful money of the United States, in immediately available funds, the principal sum of \$_____ or so much thereof as may be due and owing under the Note or any of the other Loan Documents, together with interest and any other sums payable under the Note or any of the other Loan Documents, but only on account of the Construction Loan (as defined in the Loan Agreement).

2. **Lien Free Completion.** Completion of the Improvements free and clear of liens shall be deemed to have occurred upon: (a) (i) Agency's receipt of a written statement or certificate executed by the architect designated or shown on the Plans and Specifications certifying, without qualification or exception, that the Improvements are completed, and (ii) Agency's receipt of all required occupancy permit(s) for all of the Improvements issued by the local government agency having jurisdiction and authority to issue same, and (iii) the

expiration of the statutory period(s) within which valid mechanic's liens, materialman's liens and/or stop notices may be recorded and/or served by reason of the construction of the Improvements, or, alternatively, Agency's receipt of valid, unconditional releases thereof from all persons entitled to record said liens or serve said stop notices; or (b) Agency's receipt of such other evidence of lien free completion as Agency deems satisfactory in its reasonable discretion.

3. **Obligations of Guarantor Upon Default By Borrower.** If the Improvements are not commenced and completed in the manner and within the time required by the Loan Agreement, or if, prior to the expiration of the time limits for said completion set forth in the Loan Agreement, construction of the Improvements should cease or be halted prior to completion and such cessation or halt constitutes a Default (as defined in the Loan Agreement), Guarantor shall, promptly upon demand of Agency: (a) diligently proceed to complete construction of the Improvements at Guarantor's sole cost and expense; (b) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Improvements; (c) release and discharge all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise in connection with the construction of the Improvements; and (d) pay to Agency the amount of any loss or damage incurred by Agency as a result of any delay in the completion of construction of the Improvements beyond the time specified in the Loan Agreement for such completion, which amount shall include, but not be limited to (i) interest on the principal amount outstanding under the Loan for any period of such delay which precedes the transfer of title to the Property to Agency; and (ii) the reasonable rental value of the completed Improvements during any period of the delay in completion that Agency is the owner of the Property. Without in any way limiting the above obligations of Guarantor, Guarantor acknowledges that Agency shall have no obligation to make undisbursed Loan funds available to Guarantor (pursuant to the terms and conditions of the Loan Documents) for the purposes of completing the Improvements and fulfilling Guarantor's other obligations under this Guaranty.

4. **Remedies.** If Guarantor fails to promptly perform its obligations under this Guaranty, Agency shall have the following remedies:

4.1. At Agency's option, and without any obligation to do so, to proceed to perform on behalf of Guarantor any or all of Guarantor's obligations hereunder and Guarantor shall, upon demand and whether or not construction is actually completed by Agency, pay to Agency all sums expended by Agency in performing Guarantor's obligations hereunder together with interest thereon at the highest rate specified in the Note; and

4.2 From time to time and without first requiring performance by Borrower or exhausting any or all security for the Loan, to bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Agency as a direct or indirect consequence of the failure of Guarantor to perform its obligations together with interest thereon at the rate of interest applicable to the principal balance of the Note.

4.3 If Guarantor fails to promptly perform its obligations under this Guaranty, Lender may from time to time, and without first requiring performance by Borrower or exhausting any or all security for the Loan, bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by

Lender as a direct or indirect consequence of the failure of Guarantor to perform its obligations together with interest thereon at the rate of interest applicable to the principal balance of the Note.

5. **Rights Of Agency.** Guarantor authorizes Agency, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time to: (a) approve modifications to the Plans and Specifications so long as such modifications do not materially increase the cost of constructing the Improvements nor materially increase the time necessary to complete the Improvements; (b) change the terms or conditions of disbursement of the Loan so long as such changes do not materially interfere with Borrower's ability to construct the Improvements as and when required under the Loan Agreement; (c) otherwise modify the Loan Documents, including, without limitation, making changes in the terms of repayment of the Loan or modifying, extending or renewing payment dates; releasing or subordinating security in whole or in part; changing the interest rate; or advancing additional funds in its discretion for purposes related to the purposes specified in the Loan Agreement; or (d) assign this Guaranty in whole or in part.

6. **Guarantor's Waivers.** Guarantor waives: (a) any defense based upon any legal disability or other defense of Borrower, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Borrower from any cause other than full payment and performance of those obligations of Borrower which are guaranteed hereunder; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (c) any defense based upon the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Agency or intended or understood by Agency or Guarantor; (d) any and all rights and defenses arising out of an election of remedies by Agency, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (e) any defense based upon Agency's failure to disclose to Guarantor any information concerning Borrower's financial condition or any other circumstances bearing on Borrower's ability to pay and perform its obligations under the Note or any of the other Loan Documents; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon Agency's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (i) any right of subrogation, any right to enforce any remedy which Agency may have against Borrower and any right to participate in, or benefit from, any security for the Note or the other Loan Documents now or hereafter held by Agency; (j) presentment, demand, protest and notice of any kind; and (k) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor further waives any and all rights and defenses that Guarantor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Agency may collect from Guarantor and otherwise enforce this Guaranty without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Agency forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Agency may collect from Guarantor even if Agency, by foreclosing on the real property collateral, has destroyed any right Guarantor

may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's debt is secured by real property. These rights and defenses being waived by Guarantor include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections. Finally, Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

7. **Guarantor's Warranties.** Guarantor warrants and acknowledges that: (a) Agency would not make the Loan but for this Guaranty; (b) Guarantor has reviewed all of the terms and provisions of the Loan Agreement, Plans and Specifications and the other Loan Documents; (c) there are no conditions precedent to the effectiveness of this Guaranty; (d) Guarantor has established adequate means of obtaining from sources other than Agency, on a continuing basis, financial and other information pertaining to Borrower's financial condition, the Property, the progress of construction of the Improvements, and the status of Borrower's performance of its obligations under the Loan Documents, and Agency has made no representation to Guarantor as to any such matters; (e) the most recent financial statements of Guarantor previously delivered to Agency are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to Agency) and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; and (f) Guarantor has not and will not, without the prior written consent of Agency, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, other than in the ordinary course of Guarantor's business.

8. **Subordination.** Guarantor subordinates all present and future indebtedness owing by Borrower to Guarantor to the obligations at any time owing by Borrower to Agency under the Note and the other Loan Documents. Guarantor assigns all such indebtedness to Agency as security for this Guaranty, the Note and the other Loan Documents. Guarantor agrees to make no claim for such indebtedness until all obligations of Borrower under the Note and the other Loan Documents have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless Agency is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If Agency so requests, (a) all instruments evidencing such indebtedness shall be duly endorsed and delivered to Agency, (b) all security for such indebtedness shall be duly assigned and delivered to Agency, (c) such indebtedness shall be enforced, collected and held by Guarantor as trustee for Agency and shall be paid over to Agency on account of the Loan but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as Agency deems necessary or appropriate to perfect, preserve and enforce Agency's rights in and to such indebtedness and any security therefor. If Guarantor fails to take such action, Agency, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

9. **Bankruptcy of Borrower.** In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to Agency all rights of Guarantor thereunder. If Guarantor does not file any such claim, Agency, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Agency's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Agency's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Agency or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Agency the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Agency all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that Agency receives cash by reason of any such payment or distribution. If Agency receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from Agency as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Loan Documents.

10. **Loan Sales and Participations; Disclosure of Information.** Guarantor agrees that Agency may elect, at any time, to sell, assign, or grant participations in all or any portion of its rights and obligations under the Loan Documents and this Guaranty, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Agency's sole discretion. Guarantor further agrees that Agency may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Agency with respect to: (a) the Property and Improvements and their operation; (b) any party connected with the Loan (including, without limitation, the Guarantor, the Borrower, any partner of Borrower, any constituent partner of Borrower, any other guarantor and any non-borrower trustor); and/or (c) any lending relationship other than the Loan which Agency may have with any party connected with the Loan. In the event of any such sale, assignment or participation, Agency and the parties to such transaction shall share in the rights and obligations of Agency as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment or participation, Guarantor further agrees that the Guaranty shall be sufficient evidence of the obligations of Guarantor to each purchaser, assignee, or participant, and upon written request by Agency, Guarantor shall consent to such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale, assignment, or participation.

11. **Additional, Independent and Unsecured Obligations.** The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guaranties unless said other guaranties are expressly modified or revoked in writing. This Guaranty is independent of the obligations of Borrower under the Note, the Deed of Trust and the other Loan Documents. Agency may bring a separate action to enforce the provisions hereof against Guarantor without

taking action against Borrower or any other party or joining Borrower or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guaranty.

12. **Attorneys' Fees; Enforcement.** If any attorney is engaged by Agency to enforce or defend any provision of this Guaranty, or any of the other Loan Documents relating to the construction of the Improvements, or as a consequence of any Default, breach or failure of condition under the Loan Documents relating to the construction of the Improvements, with or without the filing of any legal action or proceeding, Guarantor shall pay to Agency, immediately upon demand all attorneys' fees and costs incurred by Agency in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein.

13. **Rules of Construction.** The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Guaranty is executed by more than one person, the term "Guarantor" shall include all such persons. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

14. **Credit Reports.** Each legal entity and individual obligated on this Guaranty hereby authorizes Agency to order and obtain, from a credit reporting agency of Agency's choice, a third party credit report on such legal entity and individual.

15. **Governing Law.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by federal laws. Guarantor and all persons and entities in any manner obligated to Agency under this Guaranty consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

16. **Miscellaneous.** The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of Guarantor and Agency. The liability of all persons and entities who are in any manner obligated hereunder shall be joint and several. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.

17. **Additional Provisions.** Such additional terms, covenants and conditions as may be set forth on any exhibit executed by Guarantor and attached hereto which recites that it is an exhibit to this Guaranty are incorporated herein by this reference.

18. **Enforceability.** Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Agency's consideration for entering into this transaction, Agency has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses,

and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to Agency that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by Agency, and that Agency is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

IN WITNESS WHEREOF, Guarantors have executed this Guaranty as of the date appearing on the first page of this Guaranty.

By:

By:____DO NOT EXECUTE

Name:_____

Title: _____